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IN THE

Supreme Court of the United States

October Term, 1961

No. 117

In the Matter
of
JOHN W. SOERGEL, THOMAS MAFRICI, LEO R. PRIEST, THOMAS CRANDALL, CARMEN FERRANTE, CHARLES TEDESCO and the BOARD OF TRUSTEES OF UNION FREE SCHOOL DISTRICT NO. 6,

Appellants,

vs.

JAMES E. ALLEN, as Commissioner of Education of the State of New York,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS APPEAL

CHARLES A. BRIND
Attorney for Appellee
State Education Building
Albany, New York

Of Counsel:
JOHN P. JEHU
ELIZABETH M. EASTMAN
GEORGE B. FARRINGTON

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Appellants,

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Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS APPEAL

The appellee, James E. Allen, as Commissioner of Education of the State of New York, hereby moves to dismiss the appeal herein.

The ground for appellee's motion to dismiss the appeal is:

> The appeal herein does not present a substantial federal question.

Pertinent Statutes

The following sections of the New York State Education Law are pertinent to this cause:

Section 1801, subdivisions 1 and 2

"1. The commissioner of education is hereby authorized and empowered to lay out central school districts for the establishment of central schools to give instruction in elementary or elementary and high school subjects and to fix, determine and define the boundaries of said districts as hereinafter provided.

"2. The commissioner is authorized and empowered to make and enter in his office orders laying out territory in new central school districts or annexing to existing central school districts territory not contained within a city school district in a city having a population of more than ten thousand inhabitants, and not contained within a city school district having a full valuation of taxable real estate per public school pupil residing in the district of more than fifteen thousand dollars; provided, however, that no territory contained within a city school district in a city having a population of ten thousand inhabitants or less may be included in new central school districts or annexed to existing central school districts after July first, nineteen hundred fifty-five. The commissioner of education is authorized and empowered to make and enter in his office orders dissolving and annexing a central school district or districts to another central school district, pursuant to the provisions of subdivision two of section eighteen hundred two of this chapter. The commissioner in laying out such central school districts and in fixing and defining the boundaries thereof shall include only territory of suitable size conveniently located for the attendance of pupils and having a sufficient number of pupils for the establishment of a central school. The commissioner shall designate all central school districts by name, number and such other description as he shall deem proper."

Section 1804, subdivisions 5 and 6

"5. Nothing herein contained shall be construed to deprive any existing school district of the property belonging to such district, or to affect the indebtedness of said district. An existing district within the meaning of this article shall be construed to mean a district that lies within the boundaries of a central school district. Each such existing district shall be deemed to continue to exist in law for the purpose of paying all its just debts, including obligations lawfully issued prior to the organization of such central school district, together with all interest thereon as the same shall fall due. In levying the annual school tax upon the property of such central school districts, the board of education shall also assess and levy upon the taxable property of each such existing district which has an outstanding indebtedness, and additional sum sufficient to pay all of such indebtedness which shall fall due during the school year for which the tax is levied less any sum received by such central school district and apportioned and credited to the existing school district pursuant to the provisions of subdivision four of section eighteen hundred six of this article."

"6. The board of education shall not sell or otherwise dispose of the property of any such existing district except with the approval of a majority of the qualified voters of such existing district present and voting upon the question at a meeting of such voters duly called by such board of education; provided, however, that upon the expiration of five years from the date of discontinuance of a school, pursuant to section one thousand eight hundred five of this chapter, the board of education may, in its discretion, without a vote by such qualified voters upon such question, sell or otherwise dispose, in the manner provided by law, of such a school or other building previously used for school purposes and the real property on which it is situated. For that purpose the proceeds of such sale or disposal of property belonging to such existing district, after deducting the cost of repairs or improvements made after the organization of the central school district, shall be used for

the payment of the portion payable by such existing district of any outstanding indebtedness of such existing district which shall be due and payable or which may thereafter become due and payable. Any balance remaining after the payment of such indebtedness shall be apportioned among the taxpayers of such existing district as they appear upon the last completed town or city assessment roll preceding the date of sale, unless the voters of such existing district by a majority vote of those present and voting at a special district meeting called for that purpose shall vote to turn over the proceeds of such sale or disposal of such property to the central district to be used for the benefit of the central district. Any balance of funds remaining in the treasury of the several districts included within the central school district on July first next following the date of the establishment of such central school district, after paying all outstanding obligations then due and payable, shall be turned over to the treasurer of the central school district within thirty days thereafter and shall become available for use by the board of education of the central school district; provided, however, that if any such existing district shall have any obligations which shall become due and payable after such July first, so much of any such balance of funds as may be necessary shall be held in a special account by the treasurer of the central school district for the purpose of paying the principal of, and interest on, such obligations, as the same shall become due and payable from time to time. The title to all property erected or otherwise acquired after the organization of such central school district shall be vested in the central district, irrespective of the location of such property."

Section 1805

"§ 1805. Limitation of powers of central school district

All central school district shall have the same powers and be subject to the same limitations that are now conferred or imposed by law upon union free school districts as provided by this chapter except that in

each existing district maintaining a school at the time of centralization the central school district shall continue to maintain such school for the instruction of pupils therein up to and including the sixth elementary grade for a period, commencing on the day of centralization, of not less than five years, unless the legal voters of such existing district at a meeting of such voters duly called by the board of education of such central school district shall, by majority vote of those present and voting at such meeting, determine to discontinue the school in such existing district prior to the expiration of such minimum five year period and in such case the school shall be discontinued accordingly. At any time after the expiration of such minimum five year period the board of education of the central school district may, by a majority vote of the members thereof, discontinue such school in such existing district, provided, however, that in the event the legal voters of such existing district shall have determined not to discontinue such school at a meeting of such voters duly called upon such question, the board of education of the central school district may not discontinue such school until after the expiration of a period of five years following such determination by such legal voters. The district officers of the several existing districts shall remain in office until August first next following organization of such central school district for the purpose of conducting and maintaining school in the several districts, the carrying out of contracts in force at the time of the organization of such central school district, of paying all just debts and obligations of such existing districts due and payable on or prior to said August first, and of levying and collecting taxes raised or necessary to be raised for any of said purposes. For the purposes of the apportionment and payment of public moneys, notwithstanding any other provisions of this article, any apportionments and payments made during the school year in which such central school district was organized shall be apportioned and credited to the existing districts. Any apportionments made and paid during the school year next succeeding the date of the organization of such central school district shall be made

and credited to the central school district but the amounts thereof shall be determined upon the basis of the continuance of the existing districts as separate districts during the entire school year in which such central school district was organized."

Section 1806

"1806. State aid building quota

1. Any central school district organized under the provisions of this article shall from the time of its organization receive from the state, in addition to the apportionments provided in sections thirty-six hundred two, thirty-six hundred three, thirty-six hundred twenty-seven and forty-four hundred five of this chapter, an apportionment to be known as a building quota, the amount of which shall be determined according to the cost of the building, including site purchase, grading and improvement of site, original furnishings and equipment, machinery and apparatus, professional fees and other incidental expenses, which cost shall be approved by the commissioner, as calculated in this subdivision, provided that any building quota established prior to July first, nineteen hundred fifty-five, shall continue to be computed and paid pursuant to the provisions of this chapter as in effect at the time of the establishment of such quota.

"a. For the purpose of calculating the building cost, which shall be known as the 'ceiling' the commissioner shall ascertain the number of pupils enrolled in grades one to twelve, inclusive, of the central school district, or, where a building quota is to be established during the first year of operation of the central school district, the number of public school pupils of the existing districts comprising such central school district, enrolled in such grades, at the close of the school year next preceding the date the work is commenced and shall add thereto, as a computed kindergarten enrollment, a number of pupils equal to the average number of pupils enrolled in grades one to six, inclusive, in such school districts. The pupil enrollment thus enumerated may be increased or decreased five

per centum by the commissioner to compensate for school population trend in each central district just prior to the approval of a bond issue for a central school building.

"b. (1) Upon the basis of the pupil enrollment thus ascertained, there shall be computed for each pupil shown thereby the sum of twelve hundred dollars plus an amount not exceeding two hundred forty dollars per pupil on account of the cost of the site purchase, grading and improvement of site, original furnishings, equipment, machinery and apparatus, professional fees and other incidental costs approved by the commissioner, as a cost unit for buildings housing grades kindergarten through six, and the sum of sixteen hundred dollars per pupil plus an amount not exceeding four hundred dollars per pupil on account of the cost of such incidental expenses, as a cost unit for buildings housing grades seven through twelve, provided, however, that the sum of sixteen hundred dollars shall be so computed without the additional allowance for such incidental expenses in case of such latter buildings if the district is scheduled for reorganization in accordance with the master plan for school district reorganization of the joint legislative committee on the state education system, as amended by the commissioner, and until such reorganization is accomplished. The pupil enrollment multiplied by the cost unit shall constitute the cost of the building in a central school district. The cost unit herein specified, except for the additional allowance for incidental expenses shall be based upon the cost of material and labor on July first, nineteen hundred fifty-five, and may be increased or decreased by the commissioner in proportion to the fluctuation in the costs of material and labor after July first, nineteen hundred fifty-five. Schedules indicating such fluctuations, expressed in percentage terms of increase or decrease in the basic cost unit of twelve hundred dollars or sixteen hundred dollars, as the case may be, shall be prepared by the state industrial commissioner monthly and delivered to the commissioner. (2) A building quota for additional construction in a district in which a building quota shall theretofore have been established shall be

computed as follows: after computing the building quota pursuant to paragraph a and subparagraph (1) of paragraph b and paragraph c of this subdivision and after ascertaining the raw building quota percentage by dividing the building quota by the ceiling, all previous ceilings, or, where the costs allowed were less than such ceiling, such costs, shall be recomputed in terms of the dollar value of the cost unit as of the time of the establishment of the building quota for the additional construction. Such previous ceiling or such approved costs allowed, as so recomputed, shall be deducted from such ceiling in determining the final quota percentage for the additional construction. In the case of approved costs for building quotas established prior to May second, nineteen hundred forty-one, such costs shall be adjusted by multiplying them by the ratio of the dollar value of the cost unit at the time of the additional construction to the dollar value of the cost unit as of May second, nineteen hundred forty-one.

"c. The central school district shall contribute to the cost of the building and incidental expenses thus calculated, an amount equal to six per centum of the actual value of taxable property in the central district and the state shall contribute the remainder of such cost, thereby making the building quota to be apportioned and paid by the state the amount obtained by multiplying pupil enrollment by cost unit minus six per centum of the actual value of taxable property.

"d. Notwithstanding the provisions of paragraphs b and c of this subdivision, any central school district, for which a new building quota is to be established after July first, nineteen hundred fifty-five, and in which school construction has been or shall be approved pursuant to law and the general construction contract therefor awarded prior to July first, nineteen hundred sixty-two, shall have the right to have its building quota computed under the provisions of former section eighteen hundred six of this chapter as in effect on June thirtieth, nineteen hundred fifty-five and in the following manner:

"(1) A raw building quota percentage shall be computed as if construction had begun during the school year nineteen hundred fifty-four—fifty-five, using the enrollment as of the end of June of nineteen hundred fifty-four, the actual valuation used in the computation of regular state aid for the school year nineteen hundred fifty-four—fifty-five, and the dollar value of the cost unit as of June, nineteen hundred fifty-five:

"(2) thereupon a new ceiling shall be computed based upon the date on which construction actually began;

"(3) the ceiling so computed shall be the new ceiling, except in a district in which a building quota shall theretofore have been established, in which case the ceiling so computed shall be used to determine the balance of ceiling. Such ceiling, or balance of ceiling, as the case may be, shall then be used to adjust the raw building quota percentage determined in accordance with subparagraph (1) of this subdivision.

"e. The actual value of taxable property shall be ascertained by taking the assessed valuation of such real property as it appears upon the last assessment roll of the town or city in which such property is located, after revision as provided by law, and by applying thereto the ratio, as determined by the state board of equalization and assessment, which such assessed valuation bears to the actual value of such property.

"f. The building cost as herein computed shall not prohibit a central district from exceeding the computed building cost, but any increase shall be borne by the local district.

"g. If a central school district decides to plan for only a part of the enrollment, either in a new building or in an addition to an existing building, the building formula shall be applied except that the local district and state shall contribute in terms of the ratio established if the entire enrollment had been planned. If the entire enrollment is not planned in the initial outlay, that shall not prohibit the district on some future

date from receiving state assistance for various buildings or additions for the enrollment beyond the enrollment already cared for. Under no circumstances shall the state contribute more than its share that would result from the building formula prescribed in this subdivision.

"h. In the event that federal aid shall be granted to any school district in the construction of any school building, the amount of such federal aid shall not be included in the sum actually expended in computing the amount of such building quota.

"i. The building quota herein provided for shall be paid only on projects costing more than thirty-five hundred dollars and only in case the commissioner of education shall approve the proposed erection, enlargement, remodeling or repair of school buildings in advance of the expenditure of the sum required therefor, and in case the plans and specifications for such erection, enlargement, remodeling or repairs shall be approved by him as provided by law.

"j. The board of education of such central school district shall cause to be presented to the commissioner of education, in the manner and at the time required by him, a statement as to the amounts expended by such district for the erection, enlargement, remodeling or repair of school buildings.

"2. In the event that a school district acquires a school building by gift or otherwise without cost to the district, and the plans and specifications of such building have been approved by the commissioner of education, such commissioner shall apportion to such district a building quota computed according to the building formula prescribed in subdivision one of this section as approved and determined by such commissioner. The board of education of such district and its successors shall hold such quota in trust, invest and reinvest the same in obligations of the state of New York, of the United States and/or obligations of counties, cities, towns and villages of this state, which have not defaulted in the payment of any of their obligations, either as to principal or interest,

within five years next preceding the investment and use the income therefrom for the care and maintenance of such school building and the school grounds upon which it is located.

"3. If the cost of the erection, enlargement, remodeling or repair of school buildings is paid out of the proceeds of bonds or other evidences of indebtedness issued as provided by law, such building quota shall continue to be paid, for the year for which the apportionment is made, on the basis of the amount of the principal and interest of such bonds or evidences of indebtedness paid by such district during such year, where it has so been paid on and before July first, nineteen hundred fifty-six; provided, however, that in all other cases the apportionment of such building quota based on bond or capital note issues, shall be paid during the school fiscal year in which the installment of principal and interest on which such quota is based falls due. Receipts from the building quota shall be applied first to the payment of the principal and interest which becomes due on such bonds in the year in which the quota is received.

"For the purposes of this section the payment of bond anticipation notes made by a central school district from a budgetary appropriation shall, for the apportionment of such building quota, be deemed to be a payment of bonds in anticipation of which the said notes were issued, providing that the total amount of bonds issued and sold by such central school district shall be reduced by an equivalent amount.

"4. There shall also be paid to each central school district containing a school district which continues to exist after becoming a part of such central school district, pursuant to the provisions of section eighteen hundred four of this chapter, for the purpose of paying any outstanding indebtedness incurred by it prior to July second, nineteen hundred forty-seven, a sum of money equal to the amount necessary to pay such indebtedness of such school district, including interest, which shall fall due during such school year, less two mills on each dollar of actual valuation of the taxable property in such existing district. The first payment

to central school districts hereafter organized shall be made for and during the first school year for which the board of education of the central school district levies a tax. The central school district shall apportion and credit to the existing school district the sum so received."

Section 1514

"§ 1514. Property of districts consolidated

"When two or more districts shall be consolidated into one, the new district shall succeed to all the rights of property possessed by the annulled districts."

Section 1517

"§ 1517. Indebtedness of certain dissolved districts

"Whenever any school district is dissolved pursuant to the provisions of section fifteen hundred five of this article and annexed to an adjoining district or adjoining districts or consolidated as provided in section fifteen hundred twelve, the indebtedness of any such district evidenced by bonds or notes or relating to school building construction shall thereupon become a charge upon the enlarged district formed by such annexation or consolidation. The board of education or trustees of such enlarged district shall raise by tax an amount sufficient to pay any such indebtedness of such district as the same shall become due."

Section 1518

§ 1518. Continuance of dissolved districts for payment of debts

"Though a district be dissolved, it shall continue to exist in law, for the purpose of providing for and paying all its just debts, except as provided in section fifteen hundred seventeen; and to that end the trustees and other officers shall continue in office, and the inhabitants may hold special meetings, elect officers to supply vacancies and vote taxes; and all other acts necessary to raise money and pay such debts shall be done by the inhabitants and officers of the district."

Section 314

"§ 314 Master Plan For School District Reorganization

"The commissioner of education is hereby authorized to continue the investigations, study and review carried on by the joint legislative committee on the state education system in order to bring up to date the Master Plan For School District Reorganization (legislative document number twenty-five of nineteen hundred forty-seven); to make such studies and surveys as are necessary to review periodically and maintain such plan currently; to hold hearings in relation to affected areas for the purpose of eliciting the expression of opinion, cooperation and assistance of the inhabitants of such areas; and to make recommendations for school district reorganization so as to assure the most efficient and economical provision of educational facilities for such areas. Such recommendations shall be principally directed toward the reorganization of areas in and around the city school districts of cities having less than one hundred twenty-five thousand inhabitants, the reorganization of the remaining common and union free school districts not included in such urban and suburban areas and the reorganization of the smaller central school districts. The commissioner of education is hereby authorized, further, to amend such master plan as established by such joint legislative committee on the basis of his investigations, study and review, by orders made by him and entered in his office. Nothing herein contained shall delay, or interfere with, the exercise of the powers of the commissioner of education vested in him by articles thirty-seven or forty or sections fifteen hundred twenty-four, fifteen hundred twenty-five or fifteen hundred twenty-six of the education law."

Chapter 518 of the Laws of the State of New York of 1926, so far as pertinent to the present case, provides for the annexation of certain territory formerly part of School District No. 6 of the Town of DeWitt to the City of Syracuse and specifically further provides:

> "The territory hereby annexed to the city of Syracuse shall cease to be a part of the union free school district number six and of union free school district number fourteen, respectively. * * * The remainder of union free school district number six, and of union free school district number fourteen not annexed to the city of Syracuse, shall remain separate and distinct school districts as now constituted until changed according to law. The board of education of the city of Syracuse shall upon request grant permission to children residing in the part of such school districts not annexed, to attend schools under the care and control of the board without the payment of any tuition therefor. * * *"

Chapter 626 of the Laws of the State of New York of 1926 so far as pertinent to the present case provides in part as follows:

> "The territory hereby annexed to the city of Syracuse shall cease to be a part of the town of DeWitt, or of the school districts in which such territory is now located. * * * The remainder of union free school district number six, not annexed to the city of Syracuse, shall remain separate and distinct school districts as now constituted until changed according to law."

Statement of Facts

This proceeding was brought under Article 78 of the New York Civil Practice Act. The appellants sought therein to set aside an order of Appellee Commissioner of Education laying out Central School District No. 1 of the Towns of DeWitt, Manlius and Cicero, Onondaga County and Sullivan, Madison County, dated June 19, 1957 and issued pursuant to Section 1801 of the New York State Education Law. The Central School District laid out by this order included fifteen existing school districts among which was School District No. 6 of the Town of DeWitt.

The Commissioner of Education who is charged by statute with the duty of enforcing all general and special laws relating to the state education system, and specifically under Section 1801 of the Education Law, with the duty and authority to lay out Central School Districts and determine their boundaries, took such action after exhaustive study of the educational system in this area (R. 201 *et seq.**).

During the years 1942-47 reorganization of school districts within New York State was studied by the Joint Legislative Committee on the State Education System. The final report of that Committee (legislative document 1947, No. 25, page 517) recommended the organization of a central school district including substantially the territory of the districts set forth in the Commissioner's order. The report of the Joint Legislative Committee while standing as a recommendation and guide to the Commissioner was, of course, not inflexible. As conditions changed the Commissioner was authorized to use discretion in acting. The deviations in this case, however, were minor and had no substantial effect. One school district originally scheduled for inclusion in the said central district, *viz.*, common school district No. 5 of the Town of Cicero, was annexed to the North Syracuse Central District during the years when action on the proposed central school district here under consideration was pending. Prior to the time that the order of centralization here in question was made, common school district No. 8 of the Town of Sullivan was added. Three districts which the Joint Legislative Committee recommended be included, *viz.*, common school districts Nos. 1, 2 and 3 of the Town of DeWitt were in the meantime con-

* Unless otherwise stated, figures in parentheses refer to Folios of Record on Appeal to the Court of Appeals.

solidated as District No. 3 (205). The territory embraced within District No. 3, DeWitt as included in the order of centralization of 1957 therefore included the territory of Districts 1, 2 and 3, DeWitt as set forth in the report of the Joint Legislative Committee in 1947.

The legislature recognized, of course, that with the passage of time and changing conditions, amendments to the original plan would be required. In 1956 the legislature directed the Commissioner (Education Law, Section 314) to carry on further studies and to amend and bring up to date the Master Plan for school district reorganization adopted as a result of the legislative study and in September of 1958 the Master Plan was so amended and in respect to the territory here in question, provided for the organization of a central school district to include the territory in question (206-208). *District No. 6 of the Town of DeWitt has been at all times included in the proposed centralization as recommended by the Joint Legislative Committee in 1947 and, of course, in the amended Master Plan.* The entire reorganization, in addition, is in keeping with the recommendations both of the Joint Legislative Committee and the findings upon the studies made by the Department at legislative direction for bringing the Master Plan to date.

Following the customary procedures leading to the reorganization of school districts, studies were made of the educational needs of the community on several occasions over a period of years between 1947 and 1957 (301-399). In these studies members of the staff of the State Education Department participated with residents of the local area. The available school facilities, enrollment of various districts and their needs were considered and after this exhaustive study and expressions of views by residents of

the area, the Commissioner concluded in 1957 that the reorganization should not be delayed any further in view of the increasing educational needs of the area.

Following the centralization order of June 10, 1957 this proceeding was started.

At the referendum held in June of 1957, at which the voters of the proposed central school district voted on the question of whether or not to organize the said central school district, such proposal was defeated (R. 215, see also Special Term Exhibit 6). Pursuant to the provisions of the Education Law, the order remained valid for a period of two years. A subsequent referendum is provided for upon the submission of petitions containing the required number of signatures of voters of the area (Education Law, section 1803, subdivision 8). In March of 1959 new petitions were filed, properly signed, requesting such a further referendum (Special Term Ex. 7). This referendum was held on April 25, 1959. The Board of Canvass appointed for the purpose of canvassing the votes at such meeting duly reported that the resolution to organize the central school district was carried by a vote of 2731 in favor of the resolution to 2683 opposed, with 86 void ballots (Special Term Ex. 9). Thereupon, this proceeding, which had been held in abeyance following the first referendum, was returned to the calendar of the court and argued, before Honorable William Deckelman, Justice of the Supreme Court, at Special Term, on May 22, 1959. The decision of the Supreme Court upheld the order of the Commissioner (R. 274-294).

An appeal was taken to the Appellate Division of the Supreme Court which unanimously affirmed the decision (10 A. D. 2d 767, 197 N. Y. S. 2d 635). The appellants

appealed to the Court of Appeals which unanimously affirmed the decision (9 N. Y. 2d 633, 210 N. Y. S. 2d 233).

ARGUMENT

The appeal herein does not present a substantial federal question.

It is recognized that education is one of the functions reserved to the states under the Constitution of the United States. It is respectfully submitted that the finding of any substantial federal question in this case is foreclosed by a multitude of prior decisions of the Federal Courts and particularly of this Court which have already determined the issues purported to be raised herein by appellants.

In the Matter of the *Board of Education of Union Free School District No. 3 of the Town of Oyster Bay etc.* v. *Allen* (361 U. S. 535) this Court dismissed an appeal in similar circumstances for lack of a substantial federal question. That case was essentially on all fours with the present proceeding in that individual taxpayers and the Board of Education of Union Free School District No. 3 of the Town of Oyster Bay had instituted a proceeding to set aside an order of the Commissioner of Education made under Section 1801 of the New York State Education Law including such district in a Central School District. Petitioners in that case likewise contended that the inclusion of their district in the Central School District would result in increased taxation and that as residents of that district they would not receive direct benefit from such increased taxation, it being their contention that their district could without such increased taxation continue to supply its own educational facilities.

There is no substantial difference between that proceeding and the present proceeding. The special acts of the New York State Legislature of 1926, Chapters 518 and 626, referred to by petitioners, do not prevent reorganization of School District No. 6 of the Town of DeWitt since by express language they provide that said School District No. 6 of the Town of DeWitt shall remain a separate school district "until changed according to law". The Legislature with due regard for procedural safeguards has provided a means whereby school district boundaries may be changed by the formation of Central School Districts, *viz.* Section 1801 *et seq.* of the New York State Education Law. The reorganization of this district has been carried out in accordance with the procedures set forth therein and in the regular course of customary procedures leading to such reorganizations and the establishment of Central School Districts.

Contrary to the appellants' argument, the construction of the annexation acts, Chapters 518 and 626 of the Laws of 1926, for which appellants contend would render such acts unconstitutional because such construction would result in a discriminatory exemption of taxpayers of this comparatively small "island" from local real estate taxes to support an adequate system of education. Appellants point out repeatedly that in 1926 when the annexation acts were passed certain bonds were outstanding which were continued to be paid off by District No. 6 (the final payment of $6,000 of such debt fell due during 1960), but it should be pointed out that at that time when most taxpayers of the state were feeling the increased burden of cost of education to meet the challenge of the era, taxpayers of District No. 6 paid school tax on real property at the rate of $.50 for each thousand dollars of assessed

valuation (R. 232-234). Neighboring districts paid rates as high as $44.36 per thousand dollars of assessed valuation.

We submit that the taxpayers of such other school districts are being deprived of their property without due process of law if appellants' contentions were to be followed. The tax rate which the appellants' district had in 1959 included payment of an annual installment of the debt incurred prior to 1926 which is now fully paid leaving the district in an even more favorable tax position.

Contrary to appellants' argument that the inclusion of School District No. 6 in the Central School District is of no benefit to residents of that district, it should be pointed out that such inclusion will make available to pupils of this district the right to attend schools of the district in which they reside when the Central School District is functioning, a district in which the parents of such pupils will be voters and have a voice in the selection of board members, authorization of new school buildings and determining the kind of school system which they want for their children. Presently, the pupils living in District No. 6 attend the schools of the City of Syracuse as nonresidents. Their parents have no vote in any school matters. The children can be shifted from building to building to suit the convenience of the City School District. It goes without saying that there is a definite educational advantage for them in being in a position to attend schools which are an integral part of a school system in their own district with a continuous program designed for their needs rather than to continue to attend city schools on sufferance as nonresidents. Of course, if for any reason the pupils should elect to attend Syracuse schools, their right to do so would not be affected by the centralization.

The fact that School District No. 6 continued to pay a proportionate amount of bonded indebtedness which existed in 1926 and which has now been completely paid, creates no different situation from that of any existing school district which is included in a Central School District and which has a prior incurred indebtedness (Education Law, Section 1804, subdivision 5).

Appellants argue that the local school tax is in the nature of a local benefit or improvement assessment. This, of course, is not the case. The New York State Constitution mandates the maintenance of a system of free common schools (New York State Constitution, Article II, Section 1). The system is a state education system and is supported by a combination of State and local taxation. If schools are purely a local benefit as appellants claim, then statewide taxation to support local schools would be likewise improper.

The Legislature of New York State has recognized the principle that in order to avoid inequality in local taxation it is necessary in all cases to include in reorganized school districts territory of sufficient size and wealth to provide adequate support in the form of local taxation so that so far as possible the burden is equal for all taxpayers. The principle has been established by the Legislature and within statutory and procedural limits the Commissioner has carried out his duties as outlined by the Legislature in respect to reorganization including the present case to lay out an area, where reorganization is needed, which has adequate resources to support its schools. That is not to say as appellants argue that the "Commissioner determines that one district is not paying enough tax". If reorganization was not a necessity School District No. 6 could continue alone indefinitely but the needs of the state

system of education must dictate the Commissioner's action in relation to reorganization.

During the years following the making of the Commissioner's order in 1957 time and the population explosion have not stood still. The area in question desperately needs additional educational facilities. Over a thousand children in these districts are presently being housed in temporary classrooms in rented buildings. The appellants have had every opportunity to present their arguments to the state courts and it is submitted that the district should not be further prevented from going forward as reorganized, to solve its educational problems.

The constitutionality of New York State Education Law, Section 1801, has heretofore been upheld in the following cases:

Gardner v. *Ginther*, 232 App. Div. 296; aff. 257 N. Y. 578;

Board of Education v. *Wilson*, 277 App. Div. 809; aff. 303 N. Y. 107;

Monaco et al. v. *Allen*, 5 A. D. 2d 743; 4 N. Y. 2d 1032;

Board of Education v. *Allen*, 6 A. D. 2d 316; 6 N. Y. 2d 871, 361 U. S. 535.

The questions before this Court have already been determined by a Federal Court, *i.e.*, the United States District Court for the Northern District of New York, in which an opinion was rendered by Judge Brennan in 1949. Since the case is not reported, the full text of the opinion is attached hereto as "APPENDIX A" and made a part hereof.

This Court held in *Highland Farms Dairy* v. *Agnew*, 300 U. S. 608 at 612 as follows:

"How power shall be distributed by a State among its governmental organs is commonly, if not always, a question for the State itself."

Laramie County v. *Albany County*, 92 U. S. 307, and many cases cited;

Worcester v. *Street Railway*, 196 U. S. 539.

Where remedy exists in State Courts concerning a matter primarily of State Law, the Federal Courts will hesitate to assume jurisdiction under the principles of comity.

Defiance Water Co. v. *Defiance*, 191 U. S. 184;

Shanks v. *Banting Manufacturing Co.*, 9 F. 2d 116;

New Orleans v. *Benjamin*, 153 U. S. 411, 424.

Jurisdiction must be based on genuine and present controversies, not merely possible or conjectural problems.

Gully v. *First National Bank*, 299 U. S. 109, 113;

Koster v. *Turchi*, 173 F. 2d 605.

A finding of a substantial Federal question is foreclosed herein by decisions which this Court has made on the issues here involved.

It is well settled law that the jurisdiction of this Court is foreclosed where the Federal question presented is plainly unsubstantial because the question has been settled by prior decisions of this Court, so that the question can no longer be the subject of controversy.

In the words of Mr. Justice Sutherland in *Levering & Garrigues Co. et al.* v. *Morrin et al.* 289 U. S. 103, the Federal question here alleged is "plainly unsubstantial * * * because its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy."

To the same effect are:

California Water Service et al. v. *Redding et al.*, 304 U. S. 252;

Hannis Distilling Company v. *Baltimore*, 216 U. S. 285, 288;

McGilvra v. *Ross*, 215 U. S. 70, 76, 77-80;

Norton v. *Whiteside*, 239 U. S. 144;

Bianchi v. *Morales*, 262 U. S. 170;

Leonard v. *Vicksburg S. & P. R. Co.*, 198 U. S. 416, 421 and cases cited therein;

Delmar Jockey Club v. *Missouri*, 210 U. S. 324, 335.

As far as the questions themselves are concerned, the following cases have heretofore been decided by this Court, thus foreclosing the subject.

In *Newton* v. *Commissioners*, 100 U. S. 548, this Court upheld the power of a State to provide for the moving of a County seat, in spite of the locality having expended considerable sums to build a Courthouse, because of the absolute police power of the State over its subordinate or municipal corporations or other public bodies. The decision also affirmed the complete power of the State over all public offices within its reach which may be at pleasure created or abolished.

In *Mount Pleasant* v. *Beckwith*, 100 U. S. 514, this Court upheld the right of the State of Wisconsin to abolish a town and annex its territory to two other towns and thereafter to annex a piece of one of the newly reorganized towns to a city, without making any rules as to transfer of indebtedness. This case is particularly apposite to appellants' claims in relation to the requirement of the New York State law that each component school district must

continue to pay its own indebtedness. The Court stated at page 525 as follows:

> "Debts previously contracted must be paid entirely by the old corporation, nor has the new municipality any claim to any portion of the public property except what falls within her boundaries, and to that the old corporation has no claim whatever. *Laramie County* v. *Albany County*, 92 U. S. 307."

This holding relates to a case where no statutory regulation is made relating to the transfer or retention of indebtedness.

In this connection it will be remembered that in *Attorney General of the State of Michigan ex rel. Kies* v. *Lowrey*, 199 U. S. 233, this Court held that there was no constitutional question presented in the case of centralization of school districts under a Michigan statute where all property vested in the new school district and all indebtedness of component school districts spread over the new district.

In *Kelly* v. *Pittsburgh*, 104 U. S. 78, this Court upheld the power of the State of Pennsylvania to set a part of the Town of Alleghany into the City of Pittsburgh against the claim of the owner that this violated due process under the Fourteenth Amendment because of the imposition of city taxes on a farm. This case expressly refers to school taxes and the Court stated that as long as the tax was levied for a public purpose, this raised *no constitutional question, even though the owners of the farm might derive a smaller benefit than the owners of other property in the city*, the Court stating that a school tax had to be paid as well by those in the city who have no children.

The Court there indicated that it was not concerned with comparing benefits as a basis for the raising of a con-

stitutional question. This case is apposite, therefore, while the cases cited by appellants as a proper basis for jurisdiction of this Court are completely irrelevant in this connection. It is clear that support of public education is a public purpose and not a mere improvement or benefit to local property.

Another completely apposite decision of this Court was made in *Hunter* v. *Pittsburgh*, 207 U. S. 161. Here the city of Alleghany was annexed to the city of Pittsburgh under a unit vote statute where the entire enlarged area voted as a unit under circumstances where the voters of the smaller city were completely outvoted. The unit vote is the basis also of the establishment of the New York State central school district. In that case the due process argument was made, as it is here by appellants, and this Court completely disposed of the question by stating that the State by realignment of the territorial limits of a municipal corporation may shift real property to a new or different tax district without creating a Federal question, and that the method of voting there involved raises no constitutional question.

A similar decision was made in the case of *Cole et al.* v. *Norborne Land Drainage District*, 270 U. S. 45. Here the question involved related to a tax for drainage where land was added to a drainage district in Missouri against the wishes of the owner under the claim that this was a tax for benefits they did not share. Mr. Justice Holmes held, writing for the Court, that no violation of the due process clause was involved.

From the discussion hereinabove it seems abundantly clear that appellee based his determination on a fully reasonable and rational basis and fully complied with the

statutory requirements and procedures of the New York State Education Law in making his order of March 29, 1957, which is here under attack. The State Courts unanimously determined that there was no dispute as to the facts, as the record shows.

It is, therefore, respectfully submitted that the Federal questions sought to be presented, are plainly unsubstantial in that they have been completely foreclosed by large numbers of prior decisions of this Court, so that these questions can no longer be the subject of controversy in this Court.

Conclusion

It is therefore respectfully submitted that the appeal herein does not present a substantial federal question and it is respectfully urged that the appeal herein should be dismissed.

CHARLES A. BRIND
Attorney for Appellee
Office & P. O. Address
State Education Building
Albany, New York

Of Counsel:
JOHN P. JEHU
ELIZABETH M. EASTMAN
GEORGE B. FARRINGTON

APPENDIX A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

—o—

LEONARD W. JENNE, ROY D. MILLS, RAYMOND L. MALONEY, MABEL B. JENSEN, MILTON DOUGHTON, LESLIE HORNER, LELA BETTIS, WALTER HALKO, STEVE G. ORMAN, THELMA S. HEFFER, individually and as Trustees respectively of Common School Districts Lysander #1, Lysander #11, Van Buren #4, Van Buren #2, Lysander #14, Lysander #2, Van Buren #9, Lysander #10, Lysander #1, all of the County of Onondaga, State of New York,

Plaintiffs,

vs.

STATE OF NEW YORK and FRANCIS T. SPAULDING, Commissioner of Education of the State of New York,

Defendant.

—o—

Appearances:

Furcinito & Rinaldo, Attorneys for Plaintiffs, S. A. & K. Building, Syracuse, New York, Mr. Charles R. Rinaldo, of Counsel.

Hon. Nathaniel L. Goldstein, Attorney General of State of New York, Attorney for Francis T. Spaulding, Comr. Education of the State of New York, Albany, New York, Ruth Kessler Toch, Asst. Attorney General, of Counsel.

Motion to Dismiss.

Argued May 17, 1949, Submitted May 19, 1949, Decided May 24, 1949.

BRENNAN, Judge.

Appendix A

Opinion

The plaintiffs bring this action as individuals and trustees of certain common school districts located in the Towns of Lysander and Van Buren, Onondaga County, New York, to restrain the defendant, as Commissioner of Education of the State of New York, from proceeding in accordance with the provisions of Article 37 of the Education Law of the State of New York (referred to in the complaint as Article 33), in the matter of the formation of a central school district. The crux of the action is the alleged unconstitutionality of the pertinent provisions of the Education Law of the State.

The present status of the action is as follows. A complaint was heretofore filed with the Clerk of this Court. A summons was issued and the defendant has appeared but has not yet answered. The original complaint prayed for temporary and permanent injunctions restraining the defendant from issuing an order under the provisions of Section 1801 of the Education Law which, in effect, would designate a certain territorial area which might later ripen into a legally functioning centralized school district, in accordance with the procedural provisions of the Law. Assuming the jurisdiction of this Court, the issuance of an interlocutory or permanent injunction required the convening of a three-judge court in accordance with the provisions of Title 28 U. S. C. 2281, etc. A temporary restraining order was applied for and was denied under the provisions of Title 28 U. S. C. 2284, subdivision 5. Upon the hearing relative to the temporary restraining order, the question of the jurisdiction of this Court was raised by the defendant, and since such question appeared to

be serious, a date was set for argument thereon. Prior to the date of argument the plaintiff served an amended complaint. The amendment made did not appear to obviate the objections to jurisdiction, so that argument was addressed to the amended complaint; briefs were filed, and the question is submitted for decision.

Upon the argument the power of a single judge to determine jurisdiction in this case was raised by the plaintiffs. It is understood that such question is no longer seriously urged, and no further discussion thereof is necessary, except to state that the reported cases seem to be uniform in holding that the matter of the convocation of a three-judge court, is one of legal concern and practical importance, and that it is the duty of the judge to whom the application for an injunction is presented to scrutinize the complaint and determine whether or not jurisdiction exists.

Ex parte Porseky, 290 U. S. 30;
Carras, et al. v. *Monoghan (Dravo Corp., Intervener)*, 65 F. Sup. 658;
Priceman v. *Dewey, Gov. et al.*, 81 F. Sup. 557.

The amended complaint now before the Court is not a model of pleading. Its first allegation is "The action arises under the Fourteenth amendment of the Constitution of the United States, as hereinafter more fully appears." It is, therefore, definite that plaintiffs depend upon the existence of a question in this action which arises under the Constitution of the United States. The basis of jurisdiction, therefore, must be found in Title 28 U. S. C. 1331, which provides in substance that the district courts shall have original jurisdiction of all actions where the matter in controversy exceeds the sum or value of three

thousand dollars, exclusive of interest and costs, and arises under the Constitution of the United States. The section by its language requires, (a), that the matter in controversy exceeds the sum or value of three thousand dollars; (b), the existence of a constitutional question. Recourse must be had to the complaint to determine whether or not such elements are found therein.

Nowhere in the complaint is there any allegation of a money loss to the plaintiffs, either individually or collectively. No attempt is made to allege in any manner the value of the rights which plaintiffs claim are affected or presently endangered. The language of the statute upon which plaintiffs depend to give this Court jurisdiction requires that it must be pleaded that the matter in controversy exceeds the sum or value of three thousand dollars. If such an allegation be challenged, the plaintiffs must support same by proof. Hence, it appears without question that the complaint is insufficient on its face. The following quotation is applicable here.

> "The prerequisites to the exercise of jurisdiction are specifically defined and the plain import of the statute is that the District Court is vested with authority to inquire at any time whether these conditions have been met. They are conditions which must be met by the party who seeks the exercise of jurisdiction in his favor. *He must allege in his pleading the facts essential to show jurisdiction. If he fails to make the necessary allegations he has no standing.* If he does make them, an inquiry into the existence of jurisdiction is obviously for the purpose of determining whether the facts support his allegations" (Emphasis supplied).
>
> *McNutt* v. *General Motors, etc. Corp.*, 298 U. S. 178 at 189.

Appendix A

The following decisions with the cases cited therein are additional authorities for the conclusion reached above.

American Distilling Co. v. *City of Sausalito*, 73 F. Sup. 520;

Troy Laundry Co. v. *Lockwood*, 63 F. Sup. 384;

Buck v. *Case*, 24 F. Sup. 541 (Reversed on procedural grounds 307 U. S. 95).

The decision might end here, but since the existence of a constitutional question was argued and briefed by the parties, it is deemed advisable to resolve the conflict to avoid further unnecessary litigation.

Plaintiffs seem to rely upon their status as (a), trustees of common school districts possessing powers and charged with duties as provided by the Education Law of the State; (b), as voters within their particular school districts; (c), as taxpayers and real estate owners within their particular autonomous school tax area. They allege in a somewhat conclusive manner that their rights and their properties will be adversely affected if the defendant should make and enter in his office an order laying out territory which would include their properties in a proposed new central school district, as authorized by Section 1801 of the Education Law. Upon the argument the Court was impressed that the plaintiffs' principal claim was that the statute under consideration constitutes an unlawful delegation of power to the defendant Commissioner; that such delegation is in violation of the United States Constitution.

An examination of the statute involved discloses that the proposed action of the Commissioner is but an administrative act or a procedural means which will afford a basis

for further action by the qualified voters within the territory affected.

After the order above referred to is filed, the statute provides that a petition *may be* presented by the required number of qualified voters, which petition in substance requests that a central school district be organized or established embracing the territory referred to in the order. The petition is to be filed with the Commissioner, and if he finds same to be in accordance with law, he shall fix a time and place for a meeting of the qualified voters of the proposed district. At such meeting, the voters may by their votes adopt or reject the proposed establishment of a central school district. In the event that centralization is rejected, then the common school districts, and the officers thereof, such as represented by the plaintiffs herein would be unaffected. In the event that centralization is adopted, the statute provides in some detail for the functioning thereof, and the consolidation of the common school districts therein. The burden of plaintiffs' complaint is that the anticipated order of the Commissioner which has not yet been issued—although it is undisputed that the issuance of such an order is contemplated—would set in motion proceedings outlined above, which would result in plaintiffs' damage. It seems clear, however, that no actual damage can flow from the issuance of the order, since it has no force until and unless three subsequent events happen: (1), the inhabitants of the district desire to submit the question of centralization to a vote of the inhabitants and they express such desire in the form of a petition as provided by statute; (2), the Commissioner finds the petition sufficient under the law and designates a time and place for a meeting of the voters of the area affected; and

(3), the voters at such meeting by their votes favor the centralization of the area for educational purposes.

The allegations and inferences of the complaint and the statements made upon argument that these plaintiffs would be deprived of the office of trustee in their respective school districts; that the power of their votes as constituent members of their individual school districts will be lost; that they will be adversely affected by the creation of a new school tax district, are all theoretical rather than definite, and depend upon action in the future by the voters of the district which no one can successfully foretell, and concerning which this Court is not allowed to speculate.

The constitutionality of the sections of the Education Law of the State has been directly passed upon in the state courts. (*Gardner* v. *Ginther*, 232 A. D. 296; affirmed without opinion in 257 N. Y. 578.) The opinion discusses the question at length and with clarity. It, in effect, holds that the action of the Commissioner complained of herein is an administrative and not a legislative act. The history of the Education Law of the State is outlined therein in a clear and persuasive manner. The State must legislate within the framework of the United States Constitution, and the decision in the cited case is highly persuasive here.

> "How power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself."
>
> *Highland Farms Dairy* v. *Agnew*, 300 U. S. 608 at 612.

The existence of a federal or constitutional question is the subject of many judicial decisions covering a long period of time. It may be correct that all judicial precedents

may not be reconciled, but it seems to be well recognized that where a remedy exists in state court concerning a matter primarily of state law, the federal courts will hesitate to assume jurisdiction under the principles of comity.

Defiance Water Co. v. *Defiance*, 191 U. S. 184;
Shanks v. *Banting Mfg. Co.*, 9 F. 2nd 116;
New Orleans v. *Benjamin*, 153 U. S. 411, 424.

It is also uniformly recognized that "A genuine and present controversy, not merely a possible or conjectural one must exist * * *" to sustain jurisdiction.

Gully v. *First National Bank*, 299 U. S. 109, 113;
Koster v. *Turchi*, 173 F. 2nd 605.

Here, as in *American Distilling Co.* v. *City of Sausalito*, *supra*, any injury is subject to a condition precedent; to-wit, the ratification by the voters of the discussed plan, which, of course, may never occur. (See also *Highland Farms Dairy* v. *Agnew*, *supra*.)

In determining jurisdiction here the finding of a substantial federal question may be foreclosed by decisions which have already determined the issues raised. (*Levering & G. Co.* v. *Morrin*, 289 U. S. 103; *Water Service Co.* v. *Redding*, 304 U. S. 252.) An examination of the issues sought to be raised in the complaint indicates that such a situation exists here. Same will be briefly referred to. The office of trustee may be abolished or the duties thereof modified. (*Newton* v. *Commissioners*, 100 U. S. 548 at 559.) Municipal corporations created by the authority of the State Legislature are subject to the control of the state creating them. (*Mt. Pleasant* v. *Beckwith*, 100 U. S. 514, 534.) The State by re-alignment of the territorial limits of a municipal corporation may shift real property

to a new or different tax district. (*Kelly* v. *Pittsburgh*, 104 U. S. 78; *Hunter* v. *Pittsburgh*, 207 U. S. 161, 179.) The method of voting upon the question of centralization raises no constitutional question. (*Hunter* v. *Pittsburgh, supra*, at 177; *Cole* v. *Norborne Drainage Dist.*, 270 U. S. 45.)

As seems to be peculiar to this type of action affecting inhabitants of a comparatively small territorial area, this case has prompted arguments which are of no force, and the motives and actions of the champions of opposing forces are of no concern whatever. The question is solely one of jurisdiction, and that question alone is decided here.

As indicated above, this Court is without jurisdiction, and the complaint must be dismissed.